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SECOND REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

EIGHTEENTH LEGISLATIVE DAY
THURSDAY, JANUARY 29, 2004

Senate Chamber

President Risch called the Senate to order at 11:15 a.m.

Roll call showed all members present except Senator Brandt, absent and formally excused by the Chair; and Senators Andreason, Brandt, Ingram, Malepeai, Marley, Noble, Noh, Richardson, and Schroeder, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Alex Johnston, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senators Andreason, Marley, Noble, Noh, and Schroeder were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 28, 2004, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Ingram, Malepeai, and Richardson were recorded present at this order of business.

January 29, 2004

The JUDICIARY AND RULES Committee reports that S 1239, S 1240, S 1241, and S 1242 have been correctly printed.

DARRINGTON, Chairman

S 1239 was referred to the Finance Committee.

S 1240, S 1241, and S 1242 were referred to the Commerce and Human Resources Committee.

January 29, 2004

The FINANCE Committee reports out H 514 and S 1239 with the recommendation that they do pass.

CAMERON, Chairman

H 514 and S 1239 were filed for second reading.

January 29, 2004

Jeannine Wood
Secretary of the Senate
Statehouse Mail

Re: Minority Report

Dear Madam Secretary:

Enclosed is a minority report of the minority members of the Senate Judiciary and Rules Committee on the confirmation of Phil Reberger to the Judicial Council. This report is submitted to be read across the desk and spread upon the pages of the Journal of the Senate pursuant to Senate Rule 21(B) in conjunction with the majority report of the committee which was included in the Senate Journal of January 28, 2004.

Sincerely,
/s/ Senator Mike Burkett
Assistant Minority Leader

SENATE JUDICIARY AND RULES COMMITTEE MINORITY REPORT DISSENTING TO THE CONCLUSIONS OF THE COMMITTEE ON THE NOMINATION OF PHIL REBERGER TO THE IDAHO JUDICIAL COUNCIL

We, the undersigned Senators, dissent from the report of the Senate Judiciary and Rules Committee regarding the appointment of Phil Reberger as a member of the Idaho Judicial Council.

We voted against sending the appointment of Mr. Reberger to the Judicial Council to the Senate WITH A CONFIRM RECOMMENDATION and to instead send the appointment of Mr. Reberger to the full Senate WITH A DO NOT CONFIRM RECOMMENDATION for the following reasons:

The appointment of Mr. Reberger violates Idaho Law, Idaho Code 1-2101. The Judicial Council of the State of Idaho was created pursuant to Idaho Code 1-2101. The statute provides for three permanent members appointed by the board of commissioners of the Idaho State Bar with the consent of the Senate, and three members appointed by the Governor with the consent of the Senate. The statute further requires:

“Appointments shall be made with due consideration for area representation and **not more than three (3) of the permanent appointed members shall be from one (1) political party.**” (Emphasis added.)

The requirement that three members be from one political party applies to all “permanent appointed members.” The statute clearly applies to the members appointed by the board of commissioners of the Idaho State Bar, (two attorneys and one judge) and to the members appointed by the Governor (three individuals drawn from the citizenry at large).

The purpose of the statute creating the Judicial Council was to maintain the independence of Idaho’s judiciary and to protect Idaho’s judicial branch of government from undue political influence and partisan activity. In that light, the legislature created an evenly balanced Judicial Council with three members from the majority party and three members from any other recognized minority party. The partisan balance is a crucial element of ensuring the independence of the Judicial Council and the Judicial Branch and ensuring the Judicial Council does not become an arm of any single political party.

It is instructive that the legislature in creating the Judicial Council called for an equal balance with 50% of the appointed members from one party, a departure from the common practice of boards and commissions having a simple majority from the majority party. The neutrality and evenhandedness of the judicial branch of government is a principle that the Senate should take every effort to maintain. The criteria for the Judicial Council is stricter because the principle being protected is more important, i.e., protecting the independence of the Judiciary, a constitutionally created third branch of government.

The Judicial Council currently has four Republican party members with Mr. Reberger’s appointment in August of 2003 being the fourth Republican appointed. Mr. Reberger as well as Helen McKinney and Bill Parsons have stated their Republican credentials as part of their appointment process and are carried on the records of the Judicial Council as Republican members. The record of the committee confirms that Judge Randy Smith has served as state Republican Party Chair as well as a Bannock County Republican Chair prior to his appointment to the Judiciary. As the fourth Republican appointee to the Judicial Council, Mr. Reberger’s appointment violates I.C. 1-2101 and he should not be confirmed.

This appointment likely violates Idaho law as a result of Mr. Reberger’s receiving compensation for other positions he holds in government.

The Judicial Council statute, Idaho Code 1-2101 further provides:

“No permanent member of the Judicial Council, except a judge or justice, may hold any other office or position of profit under the United States or the state.”

Mr. Reberger reported to the Judiciary and Rules Committee that he holds other appointed positions both at the state and city level. Particularly, he is currently serving on the Idaho State

Building Authority, a post which pays compensation of \$75.00 per meeting. This compensation constitutes a profit to Mr. Reberger, it is not just reimbursement of expenses. Even a small sum of money violates the statute prohibiting compensation or profit from the state of Idaho. The city of Boise is a subsidiary of the state of Idaho and as such any compensation Mr. Reberger receives for service on the Airport Authority and/or the Capitol City Development Corp. may be in violation of I.C. 1-2101.

The minority vote to deny the confirmation of the Senate of Mr. Reberger’s appointment to the Judicial Council is based on our assertion that his appointment is in violation of state law. We would be remiss in not bringing this issue to the attention of the Senate since any decisions by the illegally constituted Judicial Council could be called into question. For these reasons, the minority members of the Judiciary and Rules Committee oppose the Senate’s confirmation of the appointment of Phil Reberger to the Idaho Judicial Council.

Dated this 29th day of January, 2004.

/s/: Senator Mike Burkett
Assistant Minority Leader
/s/: Senator Bert Marley

The Minority report was ordered filed in the office of the Secretary of the Senate and was spread upon the pages of the Journal pursuant to Senate Rule 21(B).

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

January 28, 2004

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that Dyke Nally of Boise, Idaho, was appointed Superintendent of the Idaho State Liquor Dispensary to serve a term commencing January 4, 2002, and expiring January 4, 2005.

This appointment was made subject to confirmation by the Senate. Notice of appointment is hereby given.

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Gubernatorial appointment was referred to the State Affairs Committee.

On request by Senator Stegner, granted by unanimous consent, the Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President announced that **SR 108** was before the Senate for final consideration.

Moved by Senator Davis, seconded by Senator Stennett, that **SR 108** be adopted. The question being, "Shall the resolution be adopted?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Bilbao (Little), Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Kennedy, Keough, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Spindler (Werk), Stegner, Stennett, Sweet, Williams. Total - 33.

NAYS--None.

Absent and excused--Brandt, Ingram. Total - 2.

Total - 35.

Whereupon the President declared **SR 108** adopted, title was approved, and the resolution ordered filed in the office of the Secretary of the Senate.

Senator Brandt was recorded present at this order of business.

The President announced the Judiciary and Rules Committee report relative to the Gubernatorial appointment of Dr. Gary O. Horton was before the Senate for final consideration, the question being, "Shall the report be adopted?"

On motion by Senator Marley, seconded by Senator Darrington, the Gubernatorial appointment of Dr. Gary O. Horton as a member of the Idaho Sexual Offender Classification Board was confirmed by voice vote.

The President declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The President announced the Judiciary and Rules Committee report relative to the Gubernatorial appointment of J. Philip Reberger to the Idaho Judicial Council was before the Senate for final consideration.

Moved by Senator Darrington, seconded by Senator Davis, that the report of the Judiciary and Rules Committee be adopted. The question being, "Shall the motion prevail?"

Roll call vote was requested by Senators Burkett, Kennedy, and Calabretta.

Roll call resulted as follows:

AYES--Andreason, Bailey, Bilbao (Little), Brandt, Bunderson, Burtenshaw, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Keough, Lodge, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Sorensen, Stegner, Sweet, Williams. Total - 26.

NAYS--Burkett, Calabretta, Ingram, Kennedy, Malepeai, Marley, Spindler (Werk), Stennett. Total - 8.

Absent and excused--Schroeder. Total - 1.

Total - 35.

The President declared the report adopted and directed the Secretary of the Senate to prepare a letter of the Gubernatorial appointment confirmation for his signature, attested to by the Secretary, to be transmitted to the Governor informing him of the action of the Senate.

The Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading and Reference of Bills,
House Petitions, Resolutions, and Memorials**

S 1243

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO VIDEO VOYEURISM; AMENDING CHAPTER 66, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-6609, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE CRIME OF VIDEO VOYEURISM AND TO PROVIDE A PENALTY; AMENDING SECTION 18-8304, IDAHO CODE, TO INCLUDE THE CRIME OF VIDEO VOYEURISM FOR PURPOSES OF THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT; AND DECLARING AN EMERGENCY.

S 1244

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO PERSONS ELIGIBLE FOR APPOINTMENT AS GUARDIAN OR CONSERVATOR; AMENDING SECTION 15-5-311, IDAHO CODE, TO PROHIBIT APPOINTMENT OF A CONVICTED FELON AS GUARDIAN EXCEPT UPON CONDITIONS SPECIFIED; AND AMENDING SECTION 15-5-410, IDAHO CODE, TO PROHIBIT APPOINTMENT OF A CONVICTED FELON AS CONSERVATOR EXCEPT UPON CONDITIONS SPECIFIED.

S 1245

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CONSERVATORS; AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-407A, IDAHO CODE, TO AUTHORIZE APPOINTMENT OF TEMPORARY AND EMERGENCY CONSERVATORS, AND TO GOVERN CONDITIONS OF AN APPOINTMENT, DUTIES OF A TEMPORARY CONSERVATOR AND PROCEDURES GOVERNING THE APPOINTMENT; AND AMENDING SECTION 15-5-312, IDAHO CODE, TO FURTHER GOVERN POWERS AND DUTIES OF A GUARDIAN.

S 1246
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO APPORTIONMENT OF ESTATE TAX; REPEALING SECTION 15-3-916, IDAHO CODE; AMENDING CHAPTER 3, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 13, CHAPTER 3, TITLE 15, IDAHO CODE, TO PROVIDE ADOPTION OF THE UNIFORM ESTATE TAX APPORTIONMENT ACT, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO SPECIFY THE RULES APPLICABLE TO THE APPORTIONMENT BY WILL OR OTHER DISPOSITIVE INSTRUMENT, TO SPECIFY STATUTORY RULES APPLICABLE WHEN THERE IS NO CONTROLLING INSTRUMENT, TO SPECIFY THE RULES APPLICABLE TO CREDITS AND DEFERRALS OF ESTATE TAXES, TO SPECIFY CONDITIONS FOR ADVANCEMENT OF TAX FOR UNINSULATED PROPERTY, TO PROVIDE AN INITIAL APPORTIONMENT AND RECAPTURE OF SPECIAL ELECTIVE BENEFITS, TO AUTHORIZE SECURING PAYMENT OF ESTATE TAX FROM PROPERTY IN POSSESSION OF A FIDUCIARY, TO AUTHORIZE COLLECTION OF ESTATE TAX BY A FIDUCIARY, TO GOVERN THE RIGHT OF REIMBURSEMENT, TO AUTHORIZE AN ACTION TO DETERMINE OR ENFORCE THE PROVISIONS OF THIS ACT, TO PROVIDE UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE SEVERABILITY, AND TO PROVIDE DELAYED APPLICATION.

S 1247
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO POWERS AND DUTIES OF CONSERVATORS; AMENDING SECTION 15-5-420, IDAHO CODE, TO CLARIFY CONTROL BY A CONSERVATOR OF TITLE TO THE PROPERTY OF THE PROTECTED PERSON; AND AMENDING SECTION 15-5-421, IDAHO CODE, TO PROVIDE THAT LETTERS OF CONSERVATORSHIP ARE EVIDENCE OF CONTROL OF ASSETS AND TO PROVIDE THAT AN ORDER TERMINATING CONTROL IS EVIDENCE OF THE TERMINATION.

S 1248
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO MATTERS OF PROBATE; AMENDING SECTION 15-1-201, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 15-3-706, IDAHO CODE, TO PROVIDE INSTRUCTION REGARDING THE INVENTORY OF PROPERTY PREPARED BY A PERSONAL REPRESENTATIVE; AND AMENDING SECTION 15-7-403, IDAHO CODE, TO PROVIDE THAT APPOINTMENT OF TRUSTEE DOES NOT REQUIRE A HEARING.

S 1249
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO PROVISIONS OF A LIVING WILL AND A DURABLE POWER OF ATTORNEY; AMENDING SECTION 39-4504, IDAHO CODE, TO ESTABLISH THE EFFECT OF

CERTAIN LIVING WILLS; AMENDING SECTION 39-4505, IDAHO CODE, TO ESTABLISH THE EFFECT OF A DURABLE POWER OF ATTORNEY FOR HEALTH CARE, TO GOVERN APPLICATION UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4507, IDAHO CODE, TO REMOVE A CONDITION GOVERNING THE EFFECT OF A DIRECTIVE; AMENDING SECTION 56-1020, IDAHO CODE, TO RECOGNIZE APPLICABILITY OF A DIRECTIVE TO LIFESAVING PROCEDURES; AMENDING SECTION 56-1021, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 56-1026, IDAHO CODE, TO PROVIDE APPLICATION TO ALL HEALTH CARE PROVIDERS; AMENDING SECTION 56-1027, IDAHO CODE, TO PROVIDE APPLICATION TO ALL HEALTH CARE PROVIDERS; AND AMENDING SECTION 56-1029, IDAHO CODE, TO GOVERN APPLICATION OF IMMUNITY PROVISIONS TO ALL HEALTH CARE PROVIDERS.

S 1250
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO HOMESTEAD ALLOWANCE DETERMINATIONS OF AN ESTATE; AMENDING SECTION 15-2-402, IDAHO CODE, TO FURTHER DEFINE THE RIGHT TO A HOMESTEAD ALLOWANCE; AMENDING SECTION 15-2-403, IDAHO CODE, TO FURTHER DEFINE THE VALUE OF EXEMPT PROPERTY; AMENDING SECTION 15-2-404, IDAHO CODE, TO FURTHER DEFINE A FAMILY ALLOWANCE; AMENDING SECTION 15-2-405, IDAHO CODE, TO PROVIDE PROCEDURES IN DETERMINATIONS OF HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE AND EXEMPT PROPERTY; AND REPEALING SECTION 55-1010, IDAHO CODE.

S 1251
BY JUDICIARY AND RULES COMMITTEE
 AN ACT

RELATING TO PRESENTATION OF CLAIMS AGAINST AN ESTATE; AMENDING SECTION 15-3-804, IDAHO CODE, TO SPECIFY THE MANNER AND TIME FOR PRESENTATION OF CLAIMS AGAINST AN ESTATE.

S 1252
BY STATE AFFAIRS COMMITTEE
 AN ACT

RELATING TO LICENSES TO RETAIL LIQUOR; AMENDING SECTION 23-903, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF A LICENSE, SUBJECT TO APPROVAL OF THE MAYOR AND CITY COUNCIL, TO THE OWNER, OPERATOR OR LESSEE OF A FOOD, CONFERENCE AND LODGING FACILITY CONSTRUCTED AFTER JULY 1, 2004, CONTAINING A MINIMUM OF SIXTY THOUSAND SQUARE FEET AND SIXTY GUEST ROOMS WITH A MINIMUM TAXABLE VALUE OF FIFTEEN MILLION DOLLARS IN A CITY WITH A POPULATION OF LESS THAN FIVE THOUSAND ACCORDING TO THE MOST RECENT CENSUS AND TO MAKE TECHNICAL CORRECTIONS.

S 1253
BY STATE AFFAIRS COMMITTEE
AN ACT

RELATING TO LIMITATIONS ON CONTRIBUTIONS TO CANDIDATES; AMENDING SECTION 67-6610A, IDAHO CODE, TO SPECIFY THE LIMIT ON CONTRIBUTIONS FROM A COUNTY CENTRAL COMMITTEE TO A CANDIDATE.

S 1254
BY LOCAL GOVERNMENT AND TAXATION
COMMITTEE
AN ACT

RELATING TO COUNTY AND CITY CONTRACTING AUTHORITY; AMENDING SECTION 31-4403, IDAHO CODE, TO CLARIFY COUNTY AUTHORITY CONCERNING GRANTS OF EXCLUSIVE FRANCHISES FOR SOLID WASTE DISPOSAL AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 50-344, IDAHO CODE, TO CLARIFY CITY AUTHORITY CONCERNING GRANTS OF EXCLUSIVE FRANCHISES FOR SOLID WASTE DISPOSAL AND TO MAKE TECHNICAL CORRECTIONS.

S 1243, S 1244, S 1245, S 1246, S 1247, S 1248, S 1249, S 1250, S 1251, S 1252, S 1253, and S 1254 were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

H 503 and **H 504**, by Appropriations Committee, were read the second time at length and filed for third reading.

S 1231, by Finance Committee, was read the second time at length and filed for third reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:45 p.m. until the hour of 11:15 a.m., Friday, January 30, 2004.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary